

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA DIVISION**

TENTATIVE RULINGS

EVENT DATE: 08/30/2016
JUDICIAL OFFICER: Kevin DeNoce

EVENT TIME: 08:20:00 AM

DEPT.: 43

CASE NUM: 56-2015-00462910-CU-FR-VTA
CASE TITLE: SALIENT SEC SERV VS AGENCY ARMS LLC

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Fraud

EVENT TYPE: Motion - Other (CLM) - for Motion for Judgment on the Pleadings

CAUSAL DOCUMENT/DATE FILED: Motion for Judgment on the Pleadings, 08/01/2016

The morning calendar in courtroom 43 will begin at 9 a.m. Cases including *ex parte* matters will not be called prior to 9 a.m.

Please check in with the courtroom clerk by no later than 8:45 a.m. If appearing by CourtCall, please call in between 8:35 and 8:45 a.m.

With respect to the below scheduled tentative ruling, no notice of intent to appear is required. If you wish to submit on the tentative decision, you can send an email to the court at: Courtroom43@ventura.courts.ca.gov or send a telefax to Judge DeNoce's secretary, Christine Schaffels at 805-477-5894, stating that you submit on the tentative. Do not call in lieu of sending a telefax. If you submit on the tentative without appearing and the opposing party appears, the hearing will be conducted in your absence. This case has been assigned to Judge DeNoce for all purposes.

Absent waiver of notice and in the event an order is not signed at the hearing, the prevailing party shall prepare a proposed order and comply with CRC 3.1312 subdivisions (a), (b), (d) and (e). The signed order shall be served on all parties and a proof of service filed with the court. A "notice of ruling" in lieu of this procedure is not authorized.

For general information regarding Judge DeNoce's rules and procedures for law and motion matters, ex parte matters, telephonic appearances, trial rules and procedures, etc., please visit: <http://www.ventura.courts.ca.gov/Courtroom/C43>

The court's tentative ruling is as follows:

Deny Defendant's motion for judgment on the pleadings. Ds did not establish that P's 3rd amended complaint is 'preempted' by federal law or that it should have been brought in federal court.

Discussion:

Causes of action:

- 1 - Misappropriation of trade secrets
- 2 - False designation under 15 USC 1125 (a)
- 3 - Conversion - PGT, Niswander
- 4 - Br of oral contract - PGT and Niswander only
- 5 - Intentional misrepresentation
- 6 - Omission of material fact

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7 - Unfair business practices

CCP section 438 governs judgment on the pleadings. "A motion for judgment on the pleadings is equivalent to a general demurrer, and the courts treat all properly pleaded material facts in the complaint as true." Hopp v. City of Los Angeles (2010) 183 Cal. App. 4th 713, 717. The court's view is that the only cause of action that raises a preemption issue worthy of discussion is C/A 2 for false designation under 15 USC 1125 (a) (Lanham Act) which provides as follows:

"(a) Civil action

(1) Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which--

(A) is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person, or

(B) in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services, or commercial activities,

shall be liable in a civil action by any person who believes that he or she is or is likely to be damaged by such act."

There is nothing in the statute that states that an action must be brought in district court. Winchester Mystery House, LLC v. Glob. Asylum, Inc. (2012) 210 Cal. App. 4th 579, involved a Lanham Act claim in state court. The court of appeal discussed the law of the Lanham Act and never indicated that it was a claim that could only be raised in federal court.